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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION:
OR REVOCATION OF THE LICENSE OF:

JOEL P. KURTZ, D.M.D.

LICENSE NO.: DI009153
SPECIALTY LICENSE NO.: 2053
GENERAL ANESTHESIA PERMIT
NO.: 225

Administrative Action

ORDER OF TEMPORARY
SUSPENSION

TO PRACTICE DENTISTRY
IN THE STATE OF NEW JERSEY

Peter C. Harvey, Attorney General of New Jersey, by Kevin R. Jespersen, Deputy Attorney General, applied to the New Jersey State Board of Dentistry ("Board") for a temporary suspension of the license of Joel P. Kurtz, D.M.D. ("respondent" or Dr. Kurtz), to practice dentistry in this State. Barbara Rich, D.D.S., Acting President of the Board¹, signed an Order to Show Cause on February 18, 2004 setting a hearing on the application for March 3, 2004, at 11:00a.m. The Verified Complaint filed simultaneously with the Order to Show Cause alleged in eleven counts that respondent improperly touched nine patients during the course of dental

¹ Board President John Ricciani D.M.D., and Board Vice President Arnold Rosenheck, D.D.S., were recused in this matter based on their affiliation through the University of Medicine and Dentistry with a dentist who is expected to be called as a witness by respondent.

treatment (Counts I through IX); lifted blouses of female patients while under anesthesia (Count X); and was present when a nurse partially undressed a male patient to look for tattoos (Count XI).² Specifically the complaint alleged during the period March 1997 through March 2003 that respondent, an oral and maxillofacial surgeon practicing in Newton, New Jersey during the course of dental treatment touched the legs or rubbed the buttocks, and/or vaginal area of seven patients, fondled the breasts of two patients, and lifted the blouses of female patients.

In support of this application, the Attorney General filed certified or sworn statements of fourteen individuals (eight are patients who made a complaint against Dr. Kurtz, five are witnesses supporting the patients' complaints, and one is a former employee who relayed the events underpinning Counts X and XI of the complaint.³) In addition the Attorney General presented four witnesses, A.M. (patient); V.H. (mother of patient E.H.); B.C. (patient); and G.S. (patient). He submitted dental records for

² The Attorney General and respondent have agreed to refer to patients and their family members by their initials. The Board directs that the names of those witnesses and other identifying information in the complaint or other documents be redacted to reflect only initials before public dissemination of documents.

³ Respondent's counsel objected to the submission and the introduction into evidence of the certifications and affidavits of the ten persons who did not appear as witnesses because he was not able to cross examine them. Because the Uniform Enforcement Act permits the Board to proceed on a verified application, N.J.S.A. 45:1-22, the objection was overruled and the statements were admitted into evidence.

seven patients, the transcript of the January 21, 2004, investigative inquiry of Dr. Kurtz, and a knit top.

On the return date, respondent, represented by George Daggett, Esq., and Stephen Schechner, Esq., presented the testimony of six witnesses: Dr. Kurtz; Ernest Leibov, M.D., a psychiatrist who knew patient B.C.; Howard Sosna, D.M.D. (Dr. Kurtz's partner); Doris Pagliaro, surgical assistant for Dr. Kurtz; Patricia DeRosa, a registered nurse; and Linda Scheirlow (receptionist for Dr. Kurtz). Respondent moved into evidence photographs of the office, a diagram of the office, and a statement of patient A.M. At the time of the hearing, no answer had been filed.

In evaluating the merits of the application the Board considered the evidence, both testimony and documentary, and arguments of counsel. Following deliberation, the Board, for the reasons expressed below, has determined that Dr. Kurtz's continued practice constitutes a clear and imminent danger to the public health, safety and welfare, and therefore find that his license shall be temporarily suspended pending a plenary hearing on the Verified Complaint. In making its determination the Board was persuaded by the credibility of complaining witnesses, the similarity of conduct alleged by the women who indicate they were molested (as established by both live testimony or certifications), and the corroboration of those allegations by others who provided testimony and certifications. While certain witnesses presented by

respondent were credible, their testimony as described more fully below, was not sufficient to overcome the substantial evidence presented by the Attorney General.

The State presented A.M., V.H., B.C., and G.S. as witnesses. A.M. testified that in March 2003, when she was 19 years old, she presented to Dr. Kurtz for removal of wisdom teeth. Following the procedure, she felt Dr. Kurtz pull at the waistband of her pants. Then, while being assisted to the recovery room area by the nurse, Dr. Kurtz stood behind her and placed his hand on her buttocks. Once in the recovery room, when A.M. was lying on a cot, Dr. Kurtz rubbed her leg and her crotch area. A.M. told her mother about the incident immediately after as they were in the car leaving the office.

On cross-examination, counsel for respondent challenged A.M. in her recollection of events as the statement she had given to the police (R-2 in evidence) did not include the allegation that Dr. Kurtz had rubbed her crotch area. Moreover, counsel elicited an acknowledgment that she is currently a plaintiff in a civil suit in which Dr. Kurtz is named as a defendant and that there had been a dispute over billing for the procedure performed by Dr. Kurtz.

In assessing A.M.'s testimony, the Board considered carefully respondent's challenges to her recollection and her motive in filing the complaint. The Board found A.M. to be a credible witness whose statement (R-2 in evidence), which was given

to the police shortly after the events in question, was consistent with her testimony with one exception noted.⁴ A.M. described someone playing with the waistband of her pants, Dr. Kurtz placing his hand on her buttocks en route to the recovery room, and rubbing his leg against her while she was lying on the cot in the recovery room. While there is some discrepancy between her testimony and her statement, the essence of both is the same: Dr. Kurtz touched this 19 year old female patient on the leg and buttocks as she was emerging from anesthesia. A.M. explained that because she was embarrassed and mortified by the incident, she did not detail the allegation of Dr. Kurtz rubbing her crotch area. The Board finds this to be a believable response, and is not persuaded at this time that the discrepancy affects the reliability of her statements. The Board found A.M. credible and the fact that she relayed the incident to her mother immediately after the event as evidenced from the S-7 in evidence; exhibit G attached to the Verified Complaint) further supports the veracity of A.M.'s statements.

V.H., the second witness to testify, is the mother of E.H. E.H was 19 years old in January 2001 when she presented to Dr. Kurtz for oral surgery. E.H., whose statement is attached to the Verified Complaint as Exhibit A (S-1 in evidence), was unavailable for testimony at the March 3, 2004 hearing. V.H. was

⁴ The statement, which was attached to the verified complaint as exhibit was attested to by A.M. for purposes of this proceeding on January 20, 2004. (S-6 in evidence).

physically present in the office when her daughter underwent surgery (Statement of V.H., Exhibit B attached to Verified Complaint; S-2 is evidence). V.H. testified that while her daughter was lying on a cot in the recovery room, Dr. Kurtz sat on the cot. Her daughter, groggy from the anesthesia, squirmed. As V.H. bent over to kiss her daughter, E.H. told her mother that Dr. Kurtz had touched her crotch area. V.H. testified that she was shocked and didn't know what to do. Moments later, when Dr. Kurtz returned to the recovery room and again sat on the cot, V.H. physically placed herself between Dr. Kurtz and E.H., and said, "This is my little girl." Dr. Kurtz, according to V.H.'s testimony, then called E.H.'s father (W.H., an attorney) and brought E.H. and V.H. to the telephone so they could tell W.H. that everything was O.K. (Affidavit of W.H. was admitted into evidence as S-3).

V.H. testified that on the following day, the family contacted a family friend who was a retired State Police Major. He made inquiries to determine whether there were any other complaints about Dr. Kurtz. When none were found, the family decided not to pursue the matter. Based on the information provided by the retired State Police Major who had not disclosed E.H.'s name, the State Board of Dentistry noted the matter in its files. V.H. testified that E.H. had not filed a civil suit.

On cross-examination, V.H. acknowledged that Dr. Kurtz's staff was present in the office and that they were conscientious.

She testified that she had her back to Dr. Kurtz at the time when her daughter stated that Dr. Kurtz had touched her crotch. When asked about the telephone call, V.H. stated she thought Dr. Kurtz handed her a cordless phone.

In reviewing V.H.'s testimony, the Board found her to be very credible. Her testimony was consistent with her statement (S-2 in evidence), and with the statements of her daughter (S-1 in evidence) and her husband (S-3 in evidence). While later testimony and photographs demonstrated the phone was not a cordless phone, this is a minor discrepancy and the Board does not find her description of the telephone as a cordless phone to undermine her credibility or her recollection. V.H. and E.H. both provide a consistent version of the events: E.H. reported that Dr. Kurtz, while V.H. was in the recovery room, touched E.H.'s crotch area with his hand. E.H. immediately reported this to V.H.. Moreover, the family's response, discussing the assault with a trusted friend and former law enforcement officer, further corroborates the allegations. Finally, the allegations are substantially similar to other witnesses.

The third witness presented by the Attorney General, B.C., testified about her experience in Dr. Kurtz's office. In December 2002, when she was 23 years old, Dr. Kurtz performed oral surgery on her. She testified that while she was in the procedure room, awakening from anesthesia, she felt Dr. Kurtz's hands under

her shirt, on her breasts. Because she had cotton in her mouth, she stated that she was unable to say anything, but that he removed his hands when she looked directly at him. B.C. stated that she told her father about the incident in the car as they left the office. She testified that her father told her maybe it was an effect of the anesthesia. At home, she told her sister about the incident.

On cross-examination, B.C. stated that no inappropriate touching occurred on the way to the recovery room or in the recovery room. She could not recall some details about the room, including the large window in front of the chair. She acknowledged that she was a plaintiff in a civil suit filed against Dr. Kurtz and had contacted a lawyer after seeing an article about Dr. Kurtz in the newspaper. Counsel for respondent asked B.C. whether she had asked Ernest Liebov, M.D., a former employer, to pay for counseling and then subsequently told him that she would get Dr. Kurtz to pay for it. B.C. denied making such a statement.

The Board's assessment of B.C.'s credibility is related to its review of Dr. Liebov's testimony, who testified for respondent. Dr. Liebov supervised B.C. for her clinical internship in her pursuit of a master's degree in counseling and paid her as a secretary/receptionist in his psychiatric practice. As discussed more fully below, the Board found B.C. to be credible. Her failure to recall specific details about the room does not necessarily

convince the Board at this juncture that she could not recall the offensive touching. While the majority of allegations set forth in the Verified Complaint related to touching of the buttocks, crotch area, and legs of young women, B.C.'s allegations bear a striking similarity to another patient. H.B., an 18 year old patient, has also alleged that Dr. Kurtz touched her breasts in the procedure room (S-13 in evidence).

The Attorney General's last witness presenting testimony at the hearing was G.S., who was 20 years old in January 2002 when she was treated by Dr. Kurtz. She testified that after the procedure, while she was lying on a cot in the recovery room, Dr. Kurtz placed his hand on her buttocks, then between her legs at which point he put pressure on her vaginal area. During the incident, her mother was present in the room. She did not tell her mother, as she was confused, shocked, and did not understand why it happened. She said she was not ready to talk about it. Shortly after, G.S. told her neighbor and her sister that Dr. Kurtz made her feel "uncomfortable." She testified that she said it in a way she thought they would understand that he had touched her in an inappropriate manner.

On cross-examination, G.S. repeated the essence of the incident. Respondent's counsel questioned her on her familiarity with any of the other victims and how she came to contact Detective Kinney of the Andover Police Department who had investigated the

allegations of sexual misconduct. She stated that the neighbor in whom she had confided told her about another victim and then G.S. reported the incident to the police. Her account of the sexual touching is quite similar to that of E.H. and there is no showing that she knew E.H. or of E.H.'s allegations prior to her reporting the events.

The Board found G.S. to be credible. She was consistent both in her direct testimony and on cross examination concerning Dr. Kurtz's conduct. She recalled being thirsty, getting glasses of water, being in the recovery room and being covered by a blanket. Her testimony about her reaction to the event, being confused, shocked, and not being able to talk about it, was believable.

In addition to the testimony of the four witnesses, the Attorney General submitted into evidence statements from other women who have alleged they were touched inappropriately by Dr. Kurtz. T.P., a 26 year old woman whose certification is attached to the Verified Complaint as Exhibit E (S-5 in evidence), stated that while in the recovery room: "I felt Dr. Kurtz rub his crotch on my right hand. Then I felt his left hand go up my left thigh to my outer labia." C.R., a 43 year old woman whose affidavit is attached to the Verified Complaint as Exhibit H (S-8 in evidence), alleged, among other things, that she felt Dr. Kurtz lift her sweater and then touch her buttocks on the right side.

J.L., a 17 year old female patient whose statement is attached to the Verified Complaint as Exhibit J (S-10 in evidence) stated that Dr. Kurtz rubbed her shoulder and upper back. J.L.'s mother, P.L., whose statement is attached to the Verified Complaint as Exhibit K (S-11 in evidence), related that while she was present in the recovery room, Dr. Kurtz "continually kept rubbing" her daughter's "back and I began to feel very uncomfortable about this. Then his hand actually moved very quickly to her backside and then back up again."

A fourth incident reported through the submission of certifications attached to the Verified Complaint was detailed in the statement of M.A.Q, mother of M.J.Q, who was 17 years old at the time she was treated by Dr. Kurtz. (Exhibit I; s-9 in evidence). M.A.Q. stated that while her daughter was in the recovery room, she saw Dr. Kurtz stroking her daughter's leg. Her daughter "looked very uncomfortable" and "recoiled from him moving quickly to a sitting position and pulling the blanket up to her chest and moving as far away from him as possible." After they left the office, M.J.Q. told her mother that Dr. Kurtz "is a pervert[;] he rubbed my butt" with the hand he had placed under the blanket.

The first witness in respondent's case was Dr. Kurtz.⁵ Following recitation of his professional training and work history, Dr. Kurtz identified a large diagram of the office (R-3 in evidence) and 23 photographs showing different portions of the office from various angles. He then described his professional partnership with Dr. Howard Sosna and Dr. Pamela Alberto, both oral surgeons. Dr. Kurtz described the separation of Dr. Alberto from the partnership, the issues that led to the separation, and the litigation that the break-up has spawned. Dr. Kurtz then described the procedures and protocols in effect in the office, including staff training and responsibilities.

Respondent testified that the recovery room area is easily viewed from several locations throughout the office and that it is adjacent to a common hallway. During the time A.M., B.C. and G.S. were in the office, Dr. Kurtz said there were between 10 and 15 other patients as well as 5 staff members present. He described the medications used on the patients and the manner the patients are transported to the recovery room (patient, facing nurse, places hands on nurse's shoulders and patient's elbows are supported by nurse; second person, at times himself, walks behind patient to steady patient). Dr. Kurtz denied that he had ever placed his hand on a patient's buttocks as she walked to the recovery room. He

⁵ Dr. Kurtz's testimony was interrupted by taking the testimony of another witness, Ernst Liebov, M.D. For purposes of this order his testimony is summarized here.

stated such an allegation was "ludicrous" and asserted that it would be physically impossible and would be seen by people in the office. When asked if he had ever placed his hand under a blanket, under clothes or above clothes, and had touched or rubbed a patient's vaginal area, he stated: "Absolutely not." He further denied ever touching a patient inappropriately in the operatory. Dr. Kurtz then reviewed various patient charts of complaining witnesses and described the patient assessment used to determine when a patient is moved to the recovery room.

On cross-examination, Dr. Kurtz acknowledged that R-3, the diagram of the office, did not reflect the wall that exists near the entrances to the recovery room. Dr. Kurtz stated that the photographs accurately depict the office interior. In discussing the anesthetic agents used, Dr. Kurtz noted that small doses are given incrementally so the patient is close to consciousness. He stated that he had been trained to observe patients' abdomens to monitor respiration.

Dr. Kurtz stated that he has treated patients from ages 3 to 100. He acknowledged that when he testified about the number of patients present when the incidents were alleged to have occurred, those patients could be in the waiting room, the consultation room, x-ray room, recovery room, at the front desk or being treated.

Ernest Liebov, M.D., a psychiatrist, testified to his relationship with B.C. He stated that he was her mentor for an internship for her master's degree in clinical counseling. When asked if she had completed her hours, he replied, "not exactly." Dr. Liebov said B.C. suffered from insomnia, and did not dress appropriately for the office. He testified that he referred her to a colleague for counseling and subsequently B.C. asked Dr. Liebov to assist her in paying the bills. According to Dr. Liebov, sometime after that, B.C. told him she was a party to a lawsuit against Dr. Kurtz and she would no longer need his help to pay counseling bills. Dr. Liebov then telephoned Dr. Kurtz and set up a meeting with him to relay the information.

On cross-examination by the Deputy Attorney General, Dr. Liebov acknowledged that he had taken B.C. to dinner and the movies, sent her flowers, and had given her an article of clothing (a black knit top, S-23, introduced into evidence over respondent's objection). Upon questioning from Board members, Dr. Liebov gave his opinion of Dr. Kurtz, stressing that it was a personal opinion as a colleague who is a psychiatrist, but not a professional opinion.

At this stage of the proceedings, the Board finds that Dr. Liebov's actions appear to be highly irregular. As a psychiatrist in a mentoring relationship with a clinical counseling student and an employment relationship, he referred her for

therapy. Dr. Liebov also engaged in a social relationship which included dinners, a movie date, and purchase of gifts. Given the judgment issues that appear to be involved in Dr. Liebov's actions regarding boundaries, the Board has given his testimony little weight at this juncture. Moreover, his assertion that Dr. Kurtz did not seem the type to engage in sexual misconduct was admittedly not based on a professional evaluation, and as such was given little weight by the Board.

Dr. Kurtz next presented Dr. Howard Sosna, an oral surgeon, and his partner. Dr. Sosna testified about the litigation between Dr. Alberto and Drs. Kurtz and Sosna, and described Dr. Alberto's relationship with another oral surgeon who has filed an affidavit of merit in a lawsuit against Tri-State Oral and Maxillofacial Surgery, the partnership. On cross-examination, Dr. Sosna admitted he had no firsthand knowledge of the Newton office or the events underlying the complaint.

Patricia DeRosa, a registered nurse who has worked with Dr. Kurtz for approximately 2½ years testified on his behalf. Ms. DeRosa described the procedures employed in the office, including her responsibilities and that of the other staff members, and the way the office is set up. Ms. DeRosa stated that she had never witnessed Dr. Kurtz do anything inappropriate nor had she ever seen anything suggesting something inappropriate. She stated that there are constantly people walking around the office. She further

described the manner in which Dr. Kurtz observed respirations of patients by visualizing the abdomens of patients.

Linda Scheirlow, who has worked for Dr. Kurtz for 16 years as a receptionist, testified. She described her duties. She stated that she left the practice briefly in 2001-2001, because the work load became overwhelming and Dr. Alberto could be hard to please. Ms. Scheirlow did recall speaking to S.M. (mother of A.M.). Ms. Scheirlow stated S.M. only inquired about the insurance bill and did not mention any other issue. Ms. Scheirlow stated she could see the recovery room from the reception area. She testified that she had not seen Dr. Kurtz engage in any sexual improprieties and had not ever seen him startled or surprised. On cross examination, the witness testified that she did not recall patient A.M.

Respondent's last witness, Doris Pagliaro, has been Dr. Kurtz's surgical assistant for more than 15 years. She stated that her duties include holding the patient's head during surgical procedures and that either she or Ms. DeRosa stay in the room after the procedure. She testified that she had never seen Dr. Kurtz with his hands on someone's buttocks and had never walked in on anything inappropriate.

Respondent was prepared to present two additional witnesses, Dawn Trodden and Sandra Circone. The parties agreed neither witness had knowledge of the individual complaints and that

they would testify as to the same procedures and protocols as prior witnesses. As such the Board found their testimony would be cumulative. The witnesses were not presented.

The Board finds that Ms. DeRosa, Ms. Pagliaro, and Ms. Scheirlow were credible witnesses. While the testimony of each was consistent with that of the others, and with that of Dr. Kurtz, none had specific information about the individual complaints. Further, while the office has open space and staff and patients and family members of patients move about freely, that physical layout does not compel the conclusion that the type of touching alleged did not occur. Respondent's witnesses, while present in the office, did not testify that they were physically present in the room at all times. That respondent's employees did not observe impropriety does not persuade the Board that the incidents described by the patients did not occur. Indeed, the testimony and certifications of the women and other witnesses presented by the Attorney General paint a picture of furtive actions by Dr. Kurtz; actions that took a moment and were, in some instances, literally under cover. Additionally, the dentist and the patient were in such extraordinary proximity, that even if a staff member walked in, Dr. Kurtz could easily move and appear as if nothing had happened.

The totality of information presented for purposes of this hearing demonstrates nine separate incidents in which Dr.

Kurtz repeatedly engaged in sexual misconduct with his female patients following oral surgery procedures. Eight of the nine women were young, between the ages of 17 and 26 years old. The women described a similar pattern of conduct (rubbing/grabbing legs and/or buttocks, rubbing vaginal area, fondling breasts). The Board does find any evidence to suggest that these women concocted their stories. The women did not know each other and yet they report remarkably similar conduct engaged in by respondent on different dates.

Further strengthening the credibility of their claims, four of the nine reported the incident to a family member within moments of their encounters. Based on the testimony of the witnesses as well as Dr. Kurtz, the Board does not believe that the anesthesia administered affected the ability of the witnesses to recount accurately the events that occurred. The Board is simply not persuaded by the denials of Dr. Kurtz.

The Attorney General has argued that the conduct was reckless and compulsive, a pattern that demonstrates it can recur anytime. Respondent has argued that the events didn't happen, that it strains credulity to think he would engage in the acts alleged in an open office and, in some instances with the patient's mother in the room. He stated that the design and openness of the office, the presence of his staff and other patients and their family members all support his case. He argued that the allegations,

which span a number of years and involve few patients, and made by women some of whom are now suing him, should be rejected.

The Board finds that the number of victims, the similarity of the conduct alleged, the contemporaneous reporting of the conduct by four of the victims at the time of the incidents occurred, the lack of any apparent connection between the witnesses and Dr. Alberto, the credibility of the witnesses who testified about the improper sexual touching, and the furtiveness of Dr. Kurtz's actions, all support its conclusion at this stage of the proceedings that Dr. Kurtz engaged in the conduct alleged, that his judgment is seriously flawed, and that his continued practice constitutes a clear and imminent danger to the public health, safety and welfare. Practice restrictions which limit the patient population treated cannot guard against future harm where a dentist's fundamental judgment is flawed and impulse control is implicated. Moreover , given the furtive nature of the incidents the Board cannot conclude that the presence of a monitor would adequately ensure the safety of patients.

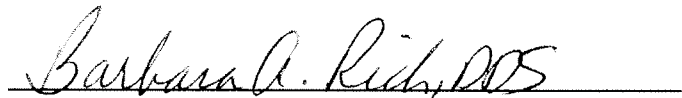
Respondent's license to practice dentistry, therefore shall be temporarily suspended pending a plenary hearing on the complaint. In order to provide for an orderly wind-down of his practice, Dr. Kurtz may continue to practice through March 12, 2004, provided that at all times after March 3, 2004, one of his staff members must be present and have him in her direct line of

sight when Dr. Kurtz is treating or consulting with a female patient.

ACCORDINGLY, IT IS ON THIS 25th DAY OF MARCH, 2004,

ORDERED that, as orally ordered at the Board's meeting on March 3, 2004, the license of Joel Philip Kurtz to practice dentistry in the State of New Jersey is temporarily suspended effective March 12, 2004.

NEW JERSEY STATE BOARD OF DENTISTRY


Barbara A. Rich, D.D.S.
Acting President